

### **REMARKS**

This paper is presented in response to the final official action dated July 21, 2009, wherein: (a) claims 1, 8-10, and 13-20 are pending; (b) claims 18-20 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Morris WO 03/039484 ("Morris"); (c) claims 1, 8-12, and 14-17 have been rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement; and, (d) claim 13 was found allowable.

This paper also is being presented in accordance with 37 CFR § 1.116(b)(1) and (b)(2) in an effort to place the application in condition for allowance. The amendments presented herein were not presented in prior communications to the U.S. Patent and Trademark Office (Patent Office) due to the applicants' good faith belief that all prior objections/rejections had been overcome by amendment and/or argument.

With this paper, claims 1, 8-10, 14, and 17 have been canceled, and claims 15, 16, 18, and 19 have been amended as described in more detail below. The applicants respectfully submit that the amendments moot all of the outstanding rejections and, therefore, respectfully request reconsideration and withdrawal of all of the rejections.

In the final action, the examiner indicated that claim 18 would be allowable if certain amendments were presented:

If the claim 18 were amended to recite "An isolated nucleic acid comprising ~~wherein~~ the nucleic sequence having is at least 90% sequence identity identical to SEQ ID NO:1 or SEQ ID NO:2," the examiner would interpret the claims to encompass only nucleic acids that comprise 90% identity to the full length of SEQ ID NO: 1 (or SEQ ID NO:2), with or without additional nucleotides at either or both ends. It is also suggested that claim 19 be amended in a similar way. This claim language would overcome the pending 102 rejection based upon anticipation by Morris.

Action at 5. The applicants have amended claim 18 consistent with this indication. Further, the applicants have similarly amended claim 19. Accordingly, the applicants

respectfully submit that claims 18-20 are now allowable and respectfully request reconsideration and withdrawal of the 35 U.S.C. § 102(b) rejection of these claims. Claims 15 and 16 have been amended to depend from claim 18, instead of claim 1.

In view of the cancellation of claims 1, 8-10, 14, and 17 and the amendment to claims 15 and 16, the applicants respectfully submit that the 35 U.S.C. § 112, first paragraph (written description), rejection is moot and, therefore, respectfully request reconsideration and withdrawal of the rejection.

The applicants respectfully submit that the foregoing amendments *do not* introduce new matter into the application or into the claims. Upon entry of the foregoing amendments, claims 13, 15, 16, and 18-20 will be pending. In view of the foregoing amendments and remarks, the applicants respectfully submit that this application is in condition for allowance. Should the examiner wish to discuss the foregoing or any matter of form in an effort to advance this application toward allowance, he is urged to telephone the undersigned at the indicated number.

Dated: September 8, 2009

Respectfully submitted,

Electronic Signature: /Shelley C. Danek,  
Reg. #57,712/  
Shelley C. Danek, Ph.D., Reg. No. 57,712  
MARSHALL, GERSTEIN & BORUN LLP  
6300 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606-6357  
(312) 474-6300  
Attorney for Applicant